

WHEREAS:

1. By an amended Ship Management Agreement "SHIPMAN 98" dated 1 October 2008 (hereinafter referred to as "the Agreement") the Claimants (hereinafter referred to as "the Managers") entered into the Agreement with the First and/or Second and/or Third Respondents (hereinafter referred to as "the Owners") relating to the "SKIF" for a management period from 1 October 2008 to 30 September 2009.

2. Clause 19.1 of the Agreement provided:-

"This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator with 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice

that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provision to provide for the appointment of a sole arbitrator...".

3. Disputes did arise between the parties as detailed hereunder and on 20 November 2009 the Managers appointed me, the undersigned, Timothy Rayment of 47 Castelnau, London SW13 9RT as arbitrator. They duly notified the Owners of my appointment by email on 24 November and requested that they appoint an arbitrator within the time limit provided for under the Agreement, i.e. 14 days.

The Owners did not respond.

4. On 17 December 2009 the Managers advised that an adduced copy of a DHL tracking record showed that the courier firm delivered the advice referred to in the paragraph above to the Owners on 4 December and therefore the 14 day period would expire the following day.

5. On 28 December the Managers gave a further notice of 7 clear days to the Owners requesting that they appoint an arbitrator of their choice failing which I would be appointed as sole

arbitrator pursuant to Section 17 of the Arbitration Act 1996.

The Owners did not respond.

6. Accordingly, on 8 January 2010, on application from the Managers, I sent an email to the Owners advising that I had now accepted the appointment as sole arbitrator. I advised them further:-

"I would advise the Respondents that English law provides for a Tribunal to proceed to its Award on the Claimants' documents and submissions alone (providing a case has been made out) should the Respondents fail or refuse to take part in the arbitration procedure. The Claimants will now serve their claim submissions and supporting documentation and the Respondents will then be permitted 28 days to serve defence submissions together with counterclaim, if any."

7. I am a Full Member of the London Maritime Arbitrators Association ("LMAA") and The Baltic Exchange in the City of London.

8. The seat of this arbitration is in England.

9. On 12 January 2010 I received an email from one of the addressees of my messages to the Owners,, although the writer of the message itself was a different person as will be evident. It read:-

"MY NAME IS SINCE 04.01.2010 .
I AM NEW EXECUTIVE DIRECTOR OF
PLC...AS I UNDERSTAND OUR COMPANY IS INVOLVED

IN ARBITRATION PROCEDURE ABOUT THE M/V
BECAUSE OF MANAGEMENT CONTRACT BETWEEN VASSILEV
MARITIME VE DIS TIC - TURKAY ISTANBUL AND
..... JSCO - VARNA - REGISTERED UNDER OFSHORE
[sic] ZONE.

PLEASE MAKE SURE THAT AND
..... IS TWO DIFFERENT COMPANY. IN SOON
TIME OUR SOLICITOR WILL INFORM YOU ABOUT OUR
POSITION."

I was satisfied from this message that my
earlier messages to the Owners had been received
by an officer of the Owners. I noted that the
message quoted above had not been copied to the
Owners but despite my repeated requests of the
Owners to rectify the matter this was not
achieved. Eventually I forwarded the message to
the Managers myself.

10. On 27 January I received a further message
from via the email of
and ending with the words:-

".....
.....".

The message advised that the new board of
directors were investigating the matter and they
were losing more than 4.5 million euros because
the vessel had been arrested on 17 March 2009
and was sold for less than US\$400,000. She
advised that she intended visiting Mr Vassilev
of the Managers at their Istanbul office with
the Owners' lawyer "to clarify everything."
They requested that I allowed them 10 days for
that purpose. They failed to copy the message

to the Managers and I therefore copied it to them the same day. In the event, the only meeting between the parties which was referred to in submissions was in July 2009.

11. The Managers served claim submissions by DHL courier on 16 February wherein they claimed a total amount of US\$335,018.45 being damages and losses allegedly incurred through the Owners' breaches of the Agreement together with interest and costs. The Managers contended that on 19 February DHL advised them that the Owners were refusing to take delivery of the package containing their claim submissions and they urged the Owners to rectify the situation. They advised them as to the DHL weighbill number and that the package would remain there for 60 days from 19 February.

12. In view of the contents of that message, on 25 February I sent an email to the Owners reminding them of the provisions of English law that I would proceed to my Award on the Managers' documents and submissions alone if they refused or failed to take part in the arbitration.

13. It was evident from copies of documents adduced by the Managers that they made efforts using the Bulgarian Law on Civil Procedure and using the services of a Bulgarian notary public to try and have the Owners collect the documents or even appoint an arbitrator but their considerable efforts were to no avail.

14. On 26 April, on application from the Managers, I sent an email to the Owners wherein I made an Order that they serve their defence

submissions together with counterclaim, if any, by 11 May 2010.

The Owners failed to respond.

15. On 27 May, on application from the Managers, I sent an email to the Owners wherein I made a Final and Peremptory Order that they serve their defence submissions together with counterclaim, if any, by 9 June 2010 failing which they would be debarred from serving any submissions and I would proceed to my Award on the submissions and documents presently before me to the exclusion of all others.

16. The Owners again failed to respond to this Final and Peremptory Order by 9 June or at all. On 15 June I sent an email to the parties confirming that submissions were closed and I was proceeding to my Award.

17. Despite their being given every opportunity to do so, the Owners did not offer any defence to the Managers' submissions. Notwithstanding that I considered it my duty to carefully consider the documents and calculations accompanying the Managers' submissions before issuing any Award and that I have done.

18. The following Boxes and Clauses of the Agreement are relevant to the issues in this arbitration:-

BOXES.

"12. Bunkering...Yes

15. Annual Management Fee...45,625 EURO

18. Law and Arbitration...Clause 19.1 shall apply".

CLAUSES.

" **3.8 Bunkering...**

The Managers shall arrange for the provision of bunker fuel of the quality specified by the Owners as required for the Vessel's trade.

5. Owners' Obligations

5.1 The Owners shall pay all sums due to the Managers punctually in accordance with the terms of this Agreement.

5.2 Where the Managers are providing Technical Management in accordance with sub-clause 3.2, the Owners shall:

- (i) procure that all officers and ratings are supplied by them or on their behalf comply with the requirements of STCW 95;
- (ii) instruct such officers and ratings to obey all reasonable orders of the Managers in connection **with the** operation of the Managers' safety management system

11.3 Indemnity

...the Owners hereby undertake to keep the Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or

howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement, and against and in respect of all costs, losses, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.

18. Termination

18.1 Owners default

- (i) The Managers shall be entitled to terminate the Agreement with immediate effect by notice in writing if any moneys payable by the Owners under this Agreement and/or the owners of any associated vessel, details of which are listed in Annex "D" shall not have been received in the Managers' nominated account within ten running days of receipt by the Owners of the Managers written request or if the Vessel is repossessed by the Mortgagees.

19. The Managers contended that prior to the conclusion of the Agreement the two parties had previous dealings relating to agency services rendered to a North Korean flag vessel, the "BEST LINE". The Managers acted as port agents to the Owners who were bareboat charterers or managers of the vessel. In the event, the vessel was abandoned by the Owners and the original North Korean owners (Daehung Transportation & Trading Company) in Istanbul on 18 September 2008 . The Managers submitted that at the time of the abandonment they were owed

money by the Owners which they acknowledged they were unable to pay.

20. The parties reached agreement to settle their differences with the Owners entrusting the management of the "... " to the Managers who would trade the vessel for the Owners' account deducting monies to settle the debts incurred on the "... ". The Agreement was entered into to reflect this settlement.

21. The Managers submitted that the commencement of the Agreement coincided with the world financial crisis in the autumn of 2008. The Managers submitted further that the income derived from the vessel was insufficient to pay her expenses and, in order that the vessel be kept operating without interruption, the Managers met requests from the Owners for funding and advanced their own money to the vessel's crew, suppliers and agents because the Owners were always short of funds.

22. The Managers contended that in early March 2009 the vessel was on a voyage from Nikolaev in the Ukraine to Agadir with a cargo of 4,500 mts of barley in bulk. The Managers submitted that whilst the vessel was en route the Owners refused their requests to bunker the vessel at Istanbul with marine diesel. Similarly, the Owners refused to take diesel at Malta, as requested by the Managers, and subsequently they stemmed diesel at Ceuta but the Owners refused to advance funds to cover the cost of bunkering.

23. The Owners did attempt to stem diesel at Gibraltar using the London office of Dan Bunkering but because no advance payment was

made no diesel was supplied. The Managers contended that at about 1930 Istanbul time on Friday 13 March the Master telephoned and advised that the vessel was running out of diesel and faced being blacked out within the next 10-12 hours in the straits of Gibraltar. Although the vessel had 20 mts of diesel in a double bottom it was not possible to pump it into a usable tank.

24. In the event, the Managers ordered the Master to anchor at the inner roads at Gibraltar. Discussions took place between Mr Vassilev of the Managers and Mr ... of the Owners resulting in the vessel being berthed at a layby berth whereupon she blacked out. The Managers arranged for 20 mts to be delivered on 17 March and the Owners arranged and paid for a further quantity supplied the following day.

25. After the bunkering operations the vessel was boarded by inspectors from the Gibraltar port control who discovered a number of deficiencies relating to international maritime conventions and the vessel was detained. The Managers made arrangements for rectification of the deficiencies but they contended those operations were sabotaged by the crew who were owed large sums of wages by the Owners. All these actions naturally caused further delay and on 29 April 2009 the vessel was arrested by the receivers of the cargo who required security for their claim against the Owners for damages for late delivery of their cargo.

26. The Managers submitted that although they themselves were short of funds they continued to financially support the Owners with management

services. That included efforts to try and obtain the release of the vessel and they had spent a considerable time with lawyers to that end and they had not invoiced the Owners for any of this time as they considered the Owners needed their assistance.

27. The Managers submitted that they considered it made no sense for them to keep incurring expenses and liabilities on behalf of the Owners. Therefore, pursuant to Clause 18 of the Agreement, they served notice in writing by email on the Owners on 26 June 2009 terminating the Agreement due to the Owners' failure to remit management fees, their ignoring the management services and that due to the arrest it was impossible to manage the vessel any further.

28. The Owners acknowledged the notice on 1 July stating:-

"Herewith we accept your notice that as per 26th June you have terminated the Shipmanagement Contract between our two parties. In line with that we would kindly ask you to prepare a detailed report of all your activities that have evolved from the execution of the contract. And please also provide us with the balance of all our obligations as per the date of Contract's termination.

Best regards

....."

29. The Owners' response was clear and unambiguous. They accepted the termination and wished to be advised as to their outstanding

indebtedness to the Managers. I find that the Owners were clearly in breach of their obligations to make timely payments to the Managers which placed them in breach of Clauses 5.1 and 5.2 of the Agreement. Furthermore, I find that the Owners are liable to indemnify the Managers for the vessel's arrest at Gibraltar as provided for by clause 18.1 of the Agreement.

30. The Managers contended that following the termination of the Agreement the parties had a meeting in Varna on 22 July 2009 where they presented their claim with full supporting documentation setting out the Owners' indebtedness to them.

31. The Managers contended that the Owners promised to study the documentation and revert which they duly did on 31 July with the following email message from Mr who signed himself as General Manager:-

"We would like to inform you that with reference to the balance in your favour for m/v we confirm it without objections.

With reference to m/v ... the partners of Mr Kolev insist the balance in your favour to be studies (sic) in the context of its literal interpretation."

32. Nothing further was heard from the Owners regarding the "... " despite the Managers sending regular reminders requesting approval and settlement. They again made efforts in pursuit of the Owners' indebtedness to them through Bulgarian lawyers and on 19 November 2009 their lawyer obtained a Court order in

Bulgaria prohibiting the sale of certain assets.

33. The Managers submitted that in breach of the provisions of Clause 5.2 of the Agreement the Owners had failed to remit funds to them during the period of the Agreement prior to and after termination despite repeated request for settlement. The Managers contended that they had suffered damages and losses and they needed to be compensated accordingly. I have already found the Owners to be in breach of the Agreement above and now turn to determine quantum.

34. The Managers set out their claim on two vessels, the "....." and the "..." with full considerable supporting documentation comprising of four bundles. I considered that the "....." was not directly involved in the Agreement because the problems on that vessel preceded 1 October 2008. However, I found that it was nevertheless inextricably and unavoidably linked to the "..." because the Agreement arose out of the previous indebtedness of the Owners to the Managers and the Agreement was entered into by the parties by way of settlement. The vessels were inseparable. On that basis I was able to determine the overall indebtedness of the Owners to the Managers.

35. The first head of the Managers' claim was for 124,879.59 euros which they converted into US\$170,395.82; the second head was for US\$160,007.96; and the third being the legal fees for the Bulgarian lawyers, US\$4,614.67. These heads totalled US\$335,018.45.

36. The Managers set out their various heads of

claim in great detail with a mass of supporting documentation. I found all sections of each claim was fully supported and vouchered and I therefore had no hesitation in awarding them the full amount claimed.

37. The Managers, having been successful, are entitled to interest. I considered it appropriate to award interest from date of the acceptance by the Owners of the Managers' termination which brought the Agreement to an end, namely 1 July 2009. They claimed for a rate of 8% but that is not currently in line with interest being awarded in London arbitration. I find 5% is more appropriate.

38. The Managers, having been successful, are awarded their costs together with the costs of this my First Final Arbitration Award. Addendum No.1 provided that the Managers would act on behalf of the Owners in the event of any litigation, arbitration or other claims settlements presumably with other parties and the Owners were to pay those fees at US\$150.00 per hour. The Managers submitted that Mr Vassilev, their managing director, handled the matter throughout and his hourly rate was US\$150.00 which, in any event, was in line with the rate in Addendum No.1. His time totalled 20 hours making a total of US\$3,000.00 which in the circumstances I consider reasonable and allowable in full.

39. NOW I, the said arbitrator Timothy Rayment having taken upon myself the burden of this arbitration, having carefully and conscientiously read and considered the submissions and documents adduced by the

Managers and the evidence adduced by them

DO HEREBY MAKE, ISSUE AND PUBLISH THIS MY FIRST FINAL ARBITRATION AWARD, NAMELY

A) I FIND AND HOLD that the Managers' claim succeeds in full in the sum of US\$335,018.45.

B) I FURTHER FIND, HOLD AND DECLARE that the Managers are hereby indemnified by the Owners for all/any liabilities that may accrue arising out of the vessel's arrest in Gibraltar in April 2009.

C) I THEREFORE AWARD AND ADJUDGE that the Owners shall forthwith pay to the Managers the sum of US\$335,018.45 (three hundred and thirty five thousand and eighteen United States Dollars and forty five cents) together with interest thereon at the rate of 5.00 (five) per cent per annum compounded at three monthly rests from 1 July 2009 until the date of payment in full by the Owners to the Managers.

D) I FURTHER AWARD AND ADJUDGE that the Owners shall bear their own and the Managers' costs in the reference which I determine in the sum of **US\$3,000.00 (three thousand United States Dollars)** together with the costs of this my First Final Arbitration Award which I settle in the sum of £6,840.00 (six thousand eight hundred and forty Pounds Sterling) **PROVIDED ALWAYS** that if, the in the first instance, the Managers shall have paid any part of this my First Final Arbitration Award they shall be entitled to an immediate refund from the Owners of the sum paid together with interest thereon at the rate of 5.00 (five) per cent per annum compounded at

three monthly rests from the date of payment until the date of repayment in full by the Owners to the Managers.

E) I DECLARE THAT THIS AWARD is final as to the matters determined herein and I reserve to myself the power to make a further Award or Awards as may be appropriate in respect of the outstanding differences between the parties.

GIVEN UNDER MY HAND on this 26th day of August 2010.

Timothy

Rayment

Witness